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Message Text

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ACTION SCS-06

INFO OCT-01 EA-10 ISO-00 L-03 HA-05 CA-01 /026 W
----------080722 110241Z /66
P 110214Z JUL 78
FM AMEMBASSY MANILA
TO SECSTATE WASHDC PRIORITY 8211

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FDR SCS
FOR L

E.O. 11652: N/A
TAGS: CGEN, CPRS, RP
SUBJECT: TOMANEK VERSUS REPUBLIC OF THE PHILIPPINES ET. AL.
REF: STATE A-2073 JUN 78

1. SUMMARY: EMBASSY IS CONCERNED ABOUT ROLE IT IS ASKED TO PLAY IN SERVICE OF PROCESS IN SUBJECT CASE AND REQUESTS DEPARTMENT'S RECONSIDERATION. END SUMMARY

2. AMONG SUPPORTING DOCUMENTS FORWARDED WITH PROCESS IN SUBJECT CASE IS A LETTER TO THE DEPARTMENT STATING THAT THE COURT CLERK HAS MAILED COPIES OF THE SUMMONS, COMPLAINT AND NOTICE OF SUIT TO THE MINISTRY OF FOREIGN AFFAIRS IN MANILA PURSUANT TO 28 U.S.C. 1608 (A), PRESUMABLY UNDER PARAGRAPH (3). ON JULY 7, THE PHILIPPINE NATIONAL BANK, ONE OF THE DEFENDANTS, REQUESTED AND RECEIVED A COPY OF THE FOREIGN SOVEREIGN IMMUNITIES ACT IN CONNECTION WITH RESEARCH IT WAS DOING RELATIVE TO THIS LAWSUIT. IT THEREFORE APPEARS THAT SERVICE THROUGH DIPLOMATIC CHANNELS PURSUANT TO 1608 (A) (4) MAY NOT BE NECESSARY AS THAT PARAGRAPH BECOMES OPERATIVE QUOTE IF SERVICE CANNOT BE MADE WITHIN 30 DAYS UNDER PARAGRAPH (3) UNQUOTE. THE DEPARTMENT'S ADVICE IN THIS REGARD WOULD
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BE APPRECIATED.

3. IF FOR SOME REASON SERVICE THROUGH DIPLOMATIC CHANNELS IS STILL CONSIDERED NECESSARY OR APPROPRIATE, EMBASSY RECOMMENDS IT BE ACCOMPLISHED VIA DEPARTMENT NOTE TO THE PHILIPPINE EMBASSY IN WASHINGTON. THE HISTORICAL PRACTICE IN THE PHILIPPINES FOR SERVICE OF PROCESS ON USG HAS BEEN

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VIA MINISTRY OF FOREIGN AFFAIRS (MFA) NOTE TO EMBASSY.
WE BELIEVE IT WOULD BE APPROPRIATE TO IMITATE THIS
PROCEDURE IN THE PRESENT SITUATION. SERVING PROCESS OF
THE SUPERIOR COURT FOR THE COUNTY OF ALAMEDA ON THE
GOVERNMENT OF THE PHILIPPINES IN MANILA BY EMBASSY NOTE
IS MUCH MORE LIKELY TO EVOKE GOP RESENTMENT THAN SERVICE
IN WPLISHED# VIA DEPARTMENT NOTE TO THE
PHILIPPINE EMBASSY IN WASHINGTON. THE HISTORICAL PRACTICE
IN THE PHILIPPINES FOR SERVICE OF PROCESS ON USG HAS BEEN
VIA MINISTRY OF FOREIGN AFFAIRS (MFA) NOTE TO EMBASSY.
WE BELIEVE IT WOULD BE APPROPRIATE TO IMITATE THIS
PROCEDURE IN THE PRESENT SITUATION. SERVING PROCESS OF
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GOVERNMENT OF THE PHILIPPINES IN MANILA BY EMBASSY NOTE
IS MUCH MORE LIKELY TO EVOKE GOP RESENTMENT THAN SERVICE
IN WASHINGTON WOULD. THE ALLEGATIONS CONCERNING THE
HUMAN RIGHTS SITUATION HERE AND INCLUSION OF THE 1978
STATE DEPARTMENT REPORT ON HUMAN RIGHTS PRACTICES IN THE
PHILIPPINES WHICH ARE PROFFERED IN SUPPORT OF PLAINTIFF'S
ANXIETIES (SEE PAGES 8, 9, AND 10 AND EXHIBIT G OF
MEMORANDUM IN SUPPORT OF EX PARTE MOTION) ADD TO OUR
CONCERN.

4. ACTION REQUESTED: RECONSIDERATION AND GUIDANCE.
MURPHY

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NOTE BY OC/T: #AS RECEIVED.

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Message Attributes

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Draft Date: 11 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
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Disposition Date: 20 Mar 2014
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ISecure: 1
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